

REMARKS

Claims 14 and 24 are canceled without prejudice, claims 29 to 41 are added, and therefore claims 11, 13, 15 to 23, and 25 to 41 are now pending in the present application.

Reconsideration is respectfully requested for the reasons explained herein.

Applicants thank the Examiner for acknowledging the claim for foreign priority and for indicating that all certified copies of the priority documents have been received.

Applicants thank the Examiner for considering the previously filed Information Disclosure Statement, PTO 1449 paper and cited references.

Claims 13, 14, 23, and 24 were rejected under the second paragraph of 35 U.S.C. 112 as being indefinite.

Although the rejections may not be agreed with, the claims have been rewritten without prejudice to positively recite the new features, as essentially suggested. Claims 14 and 24 have been canceled, since their features have been included in their respective base claims 11 and 21. It is believed and respectfully submitted that claims 13 and 23, as presented, are allowable.

Withdrawal of the indefiniteness rejections is therefore respectfully requested.

Claims 11 to 15, 20 to 24, and 25 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,312,538 to Metrich ("Metrich").

As regards the anticipation rejections of the claims, to reject a claim under 35 U.S.C. § 102(b), the Office must demonstrate that each and every claim feature is identically described or contained in a single prior art reference. (*See Scripps Clinic & Research Foundation v. Genentech, Inc.*, 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991)). Still further, not only must each of the claim features be identically described, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed invention, namely the claimed subject matter of the claims, as discussed herein. (*See Akzo, N.V. v. U.S.I.T.C.*, 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986)).

As further regards the anticipation rejections, to the extent that the Office Action may be relying on the inherency doctrine, it is respectfully submitted that to rely on inherency, the Office must provide a "basis in fact and/or technical reasoning to reasonably support the

determination that the allegedly inherent characteristics *necessarily* flows from the teachings of the applied art.” (See M.P.E.P. § 2112; emphasis in original; and see *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Int’f. 1990)). Thus, the M.P.E.P. and the case law make clear that simply because a certain result or characteristic may occur in the prior art does not establish the inherency of that result or characteristic. Accordingly, it is respectfully submitted that any anticipation rejection premised on the inherency doctrine is not sustainable absent the foregoing conditions.

While the rejections may not be agreed with, to facilitate matters, the features of claims 14 and 24 (which have been canceled without prejudice) have been included in their respective base claims 11 and 21, so that these claims are allowable. Even if the Metrich reference may concern a constant current source for supplying a pump current, it does not identically disclose or suggest the feature in which for a fixed value of the pump current and a predefined duration of the ON phases and the OFF phases, the device is configured to predefine the number of ON phases and OFF phases, as provided for in claims 11 and 21, as presented.

It is noted that the corresponding claims in the corresponding European Patent Application have been likewise revised and are therefore also believed to be allowable.

Accordingly, claims 11 and 21 are allowable, as are their respective dependent claims. Withdrawal of the anticipation rejections of claims 11 to 15, 20 to 24, and 25 is therefore respectfully requested.

Claims 16, 19, 26, and 28 were rejected under 35 U.S.C. §103(a) as being unpatentable over the Metrich reference in view of U.S. Patent No. 5,895,564 to Miyata et al. (“Miyata”).

To reject a claim under 35 U.S.C. § 103(a), the Office bears the initial burden of presenting a *prima facie* case of obviousness. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish *prima facie* obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

Also, as clearly indicated by the Supreme Court in *KSR*, it is “important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements” in the manner claimed. *See KSR Int’l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727 (2007). In this regard, the Supreme Court further noted that “rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id.*, at 1396. Second, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim features. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

Claims 16, 19, 26, and 28 ultimately depend from claims 11 and 21 respectively, as presented, and they are therefore allowable for the same reasons as explained above because the secondary Miyata does not cure – and is not asserted to cure – the critical deficiencies of the primary Metrich reference.

Accordingly, withdrawal of the obviousness rejections of claims 16, 19, 26, and 28 is respectfully requested.

Claim 18 was rejected under 35 U.S.C. §103(a) as being unpatentable over the Metrich reference in view of the Miyata reference in further view of U.S. Patent No. 6,623,618 to Kato et al. (“Kato”).

Claim 18 ultimately depends from claim 11, as presented, and it is therefore allowable for the same reasons as explained above because the secondary Miyata and Kato references do not cure – and are not asserted to cure – the critical deficiencies of the primary Metrich reference.

Accordingly, withdrawal of the obviousness rejection of claim 18 is respectfully requested.

Claims 17 and 27 were rejected under 35 U.S.C. §103(a) as being unpatentable over the Metrich reference in view of U.S. Patent No. 4,824,549 to Hamada et al. (“Hamada”).

Claims 17 and 27 ultimately depend from claims 11 and 21 respectively, as presented, and they are therefore allowable for the same reasons as explained above because

the secondary Hamada reference does not cure – and is not asserted to cure – the critical deficiencies of the primary Metrich reference.

Accordingly, withdrawal of the obviousness rejections of claims 17 and 27 is respectfully requested.

As further regards all of the obviousness rejections, any Official Notice is respectfully traversed to the extent that it is maintained and it is requested that the Examiner provide specific evidence to establish those assertions and/or contentions that may be supported by the Official Notices under 37 C.F.R. § 1.104(d)(2) or otherwise. In particular, it is respectfully requested that the Examiner provide an affidavit and/or that the Examiner provide published information concerning these assertions. This is because the § 103 rejections are apparently being based on assertions that draw on facts within the personal knowledge of the Examiner, since no support was provided for these otherwise conclusory and unsupported assertions. (See also MPEP § 2144.03).

New claims 29 to 41 do not add any new matter and are supported by the present application, including the specification. Claims 29 to 41 ultimately depend from claims 11 and 21, respectively, and they are therefore allowable for the same reasons as their respective base claims 11 and 21. Additionally, each of claims 29 to 41 provides further features that are not disclosed or suggested by the applied references, as any review of the applied references makes plain.

Claims 40 and 41 (which respectively depend from claims 21 and 12) further includes the following features: a sample-and-hold circuit, which is connected to the measuring electrode situated in the reference-gas space; an analog-to-digital converter, which is in series with the sample-and-hold circuit; and a comparator which receives a digitized voltage from the analog-to-digital converter. It is respectfully submitted that the Metrich reference does not identically disclose (or suggest) these additional features, as any review of the Metrich reference makes plain. For at least these further reasons, claims 40 and 41 are allowable.

Accordingly, claims 11, 13, 15 to 23, and 25 to 41 are allowable.

CONCLUSION

In view of the foregoing, all of pending claims 11, 13, 15 to 23, and 25 to 41 are allowable. It is therefore respectfully requested that the rejections (and any objections) be withdrawn. Prompt reconsideration and allowance of the present application are therefore respectfully requested.

Respectfully submitted,

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